## REMARKS

This amendment under Rule 111 is offered in response to the Office Action of February 5, 2003, which re-opened prosecution after appeal.

The Applicant has amended Claim 4 thereby obviating the rejection under 35 U.S.C. §112, second paragraph.

The Office Action rejected Claims 1, 2, 14 and 15 under 35 U.S.C. §102(b) as anticipated by the Speelman reference (U.S. Patent No. 5, 183,363). Similarly, the Office Action rejected Claims 1, 2, 4-6, 11-12 and 14-15 under 35 U.S.C. §102(b) as anticipated by the Prusik reference (U.S. Patent No. 5,709,472) and rejected Claims 7-10 under 35 U.S.C. §103(a) as obvious over the Prusik reference in view of the Haas reference (U.S. Patent No. 5,719,828).

Independent Claim 1 has been amended to clarify that the first portion of said layer of material is initially free from exposure to said threshold temperature "prior to use by a user" and that the second portion of said layer of material is initially exposed to said threshold temperature "prior to use by a user" and thereby is fused which provides said second appearance to said second portion. Independent Claim 14 has been amended similarly. It is respectfully submitted that this formation of a visible pattern between fused and unfused portions the layer "prior to use by a user" is simply not disclosed in the prior art.

In the Speelman reference, in column 3, lines 57-60, states that "Prior to exposure to steam, steam sterilization indicator 10 is in a clear state, as shown in Fig. 3. In a clear state, steam indicated ink 32 has not changed color and *tablet 16 has not melted.*" (italicization added). It appears that the Office Action is asserting that tablet 16 is somehow the second portion of the material which is fused "is initially exposed to said threshold temperature". By way of addition

of the language "prior to use by a user", it should be clear that the Speelman reference is avoided, as the steam technician mentioned in column 3, line 60 is clearly not provided with tablet 16 already fused. If further clarification of this language is suggested, the Examiner is respectfully requested to telephone the Applicant's counsel.

Similarly, neither the Haas nor the Prusik reference shows the formation of pattern by the first (unfused) portion and a second (fused) portion of the material "prior to use by a user".

In view of the above, each of the claims in this application is believed to be in immediately condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issue.

Respectfully submitted,

Gerald Levy
Registration No. 24,419

Ronald E. Brown
Registration No. 32,200

Pitney, Hardin, Kipp & Szuch, L.L.P.
685 Third Avenue
New York, New York 10017
212-297-5800

APPENDIX

Please amend Claims 1, 4 and 14 as follows:

1. (twice amended) A temperature indicating surface comprising:

a layer of material which substantially irreversibly changes from a first appearance to a second appearance in response to exposure to a threshold temperature, and where said material irreversibly fuses in response to said threshold temperature, wherein a first portion of said layer of material is initially free from exposure to said threshold temperature prior to use by a user and is thereby fusible which provides said first appearance to said first portion, and wherein a second portion of said layer of material is initially exposed to said threshold temperature prior to use by a user and thereby is fused which provides said second appearance to said second portion, whereby said first portion and said second portion form a visible pattern.

4. (amended) The temperature indicating surface of Claim [3] 1 wherein said layer of material is formed on a label.

14. (twice amended) A temperature indicating surface including a first portion comprised of material that irreversibly fuses upon exposure to a threshold temperature thereby changing from a first appearance to a second appearance, said first portion initially being fusible prior to use by a user to provide said first appearance, and further including a second portion of said material being fused prior to use by a user to provide said second appearance.